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No. 90-1452

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LEAR SIEGLER, INC., a Delaware Corporation,
Petitioner,

v.

RANDALL SCOTT KIRBY,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITIONER'S REPLY BRIEF

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April 8, 1991

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PETITIONER'S REPLY BRIEF

ARGUMENT

The decision of the Eighth Circuit here warrants review by this Court.

A. The Court of Appeals Ignored the Controlling State Court Decision

Respondent's brief opposing certiorari contains extensive discussion of general principles of Missouri products liability law. That discussion, while informative, is not directly relevant to this Court's jurisdiction. One narrow and very specific ruling by the federal trial court below makes this case "certworthy." That ruling, and its express legal and factual justification, are indisputable.

The federal trial court in this case refused to apply the most recent Missouri law on point. *See* Petition for Cer-

tiorari at 7-9. The judge stated his reasons in clear and direct terms—in his opinion three Missouri appellate judges had simply interpreted Missouri law incorrectly. *Id.* In making this ruling, the federal judge denied petitioner access to its best defense under Missouri law. *Id.* at 10. In state courts in Missouri a consumer who modifies a product and later suffers injury can be barred from the courtroom as a matter of law. *Gomez v. Clark Equipment Co.*, 743 S.W.2d 429, 433 (Mo. App. 1987). In this federal court the same Missouri modification defense is not allowed.[1] Petition for Certiorari at 7-10. As set out fully in the Petition for Certiorari, the offense to federalism principles is clear. *Id.* The per curiam appellate ruling affirming this trial decision is plainly wrong and should not be allowed to stand.

B. *Salve Regina College v. Russell* Requires Summary Reversal

On March 20, 1991 this Court decided *Salve Regina College v. Russell*, —— S. Ct. ——, 59 U.S.L.W. 4219 (U.S. Mar 20, 1991). *Salve Regina* discarded the traditional "automatic" deference afforded to a district court's interpretation of the law in its state, calling for a "review de novo [of] a district court's determination of state law" by the federal appellate court. 59 U.S.L.W. at 4220. The purpose of the new standard is to ensure full appellate review: "Independent appellate review necessarily entails a careful consideration of the district court's legal analysis." *Id.* at 4221.

The appellate court in this case obviously did not know or apply this new standard of review at the time it ren-

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[1] Respondent makes two arguments to oppose certiorari: 1) that the removal of the safety shield in this case was only a misuse of the product, not a modification, and 2) that other designs like a "hinged" shield would have been safer. *See* Op. Cert. at 9-24. These state law arguments do not affect the basic error below—the federal court denied Lear Siegler access to a complete defense, available in Missouri state courts, that could have won its case.

dered its opinion. The thirteen line per curiam order of the Eighth Circuit (Petition for Certiorari, Appendix A), in no way meets the new test of de novo appellate review. To the contrary, the "traditional deference" accorded trial courts is obvious on the face of the summary opinion. This Court should reverse summarily the decision below and remand the case for review in light of the *Salve Regina College* decision.

CONCLUSION

The petition for writ of certiorari should be granted and the judgment below should be summarily reversed or the case should be set for briefing and oral argument.

Respectfully submitted,

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